The Cram-Down

Tampa Bay Bankruptcy Bar Newsletter Summer 1999

The President's Message

By Dennis J. LeVine

This is my last President's Column. I want all of you to know that it has been an honor and a privilege to serve as the President of our Association.

This year has been marked by significant activity in the Tampa Bay Bankruptcy Bar Association. For the first time, the Association put on a holiday party, and a golf tournament. We are looking forward to the Three Hour Cruise in June.

The Officers and Board of Directors of the Association have worked tirelessly behind the scenes to make this year a success, and I want to thank them. Under the leadership of John Lamoureux, the format, layout and content of the Newsletter have improved dramatically. Allyson Hughes and Steve Berman, with the assistance of many of our members, have put together interesting CLE programs. Dan Herman and Sara Kistler have helped to expand the lines of communication between the Association and the Judges. The membership of the Association has increased under the leadership of Rod Anderson. Ed Rice and Pat Smith have begun work on long-term projects to benefit the members of the Association and the public. Special mention goes to the Clerk's Office, who, led by Chuck Kilcoyne, put on a very successful seminar in April. Last, but certainly not least, my fellow officers – Mike Horan, Russ Blain, John Emmanuel and Zala Forizs – all helped me provide these services and benefits to all the members of the Association.

We stand on the threshold of significant changes in bankruptcy practice. First, Congress will undoubtedly pass sweeping bankruptcy reform legislation this year, and will leave it to us to deal with the "law of unintended consequences." I call on all members of the Association to become familiar with the proposed legislation. I also continue to encourage you to become involved in the legislative process by contacting your representative in Congress and Senators with specific suggestions regarding the legislation.

Second, we are on the dawn of a new era of bankruptcy judges in the Tampa division. The retirement of Judge Paskay truly will be the end of an era. I know I speak for all members of the Association when I say that the opportunity to practice bankruptcy law in front of Judge Paskay has been a rewarding and challenging (as well as entertaining) experience.

Thank you again for the honor to serve as President of our Association, and for all of your assistance and support.

Inside This Issue

View From The Bench

By Alexander L. Paskay
Chief U.S. Bankruptcy Judge

HR 833 BANKRUPTCY REFORM ACT OF 1999 PASSED ON MAY 5, 1999 (ENGROSSED IN HOUSE)

This legislation is an attempt by Congress to revise the Bankruptcy Code, particularly the provisions which deal with individual consumer debtors. It is apparently designed to stem the tide of an uncontrollable increase in bankruptcy filings by individual consumer debtors. The legislation is, no doubt, the product of an immense concentrated lobbying effort by credit card industry issuers and lenders, now including federal credit unions.

This Bill consists of Titles I through XII. This article covers some, but not all, of the significant provisions of Title I of the proposed bill.

TITLE I - CONSUMER BANKRUPTCY PROVISIONS.

SECTION 102 - DISMISSAL OR CONVERSION

This is a comprehensive revision of the current Section 707, currently entitled Dismissal. Subclause (a) changes the title by striking the section heading and Section 707 will be entitled Dismissal of a Case or Conversion to a Case Under Chapter 13.

Subclause 2(A)(i), which is the heart of the "needs based bankruptcy" introduces a radical new concept heretofore unknown and never part of any modern bankruptcy legislation in this country. The concept of a "presumption of abuse" places the burden on the individual seeking relief in the bankruptcy court to overcome the "presumption of abuse" which arises if the debtor is unable to establish the threshold standard to the right to relief under Chapter 7. Presently, Bankruptcy Code Section 707(b) provides for the dismissal of a Chapter 7, but dismissal is appropriate only if the court finds that granting the relief would be a "substantial" abuse of the provisions of Chapter 7. Moreover, presently Section 707(b) provides that only the court or the United States Trustee has standing to seek a dismissal and there shall be a presumption in favor of granting the relief requested by the debtor.

Subclause (a)(2)(B) of the Bill now specifies who can seek a dismissal or conversion. Under the current Section 707, only the court on its own, or on the motion of the U.S. Trustee, may order dismissal or conversion, but not at the request or suggestion of any party of interest. This proposed amendment specifies that in addition to the court and the U.S. Trustee, a panel trustee may seek a dismissal or conversion. Most importantly, it provides that unlike the previous standard which was "substantial abuse" the proposed amendment provides that a Chapter 7 case may be dismissed or converted for "abuse" only. It should be noted however, that in a later Subclause (c) (ADMINISTRATIVE PROVISIONS) it provides indirectly that in addition to the foregoing a Bankruptcy Administrator, where applicable, and a party of interest may bring a motion to dismiss or convert under this section for abuse. This shall be discussed in detail below.

In order to understand the threshold standard to the right to relief under Chapter 7, one must first look to the definition of the term "current monthly income" as used in the Bill in Section (b) (DEFINITIONS). The term means the average monthly income of the debtor and, in a joint case, the debtor's combined income with the income of the debtor's spouse earned during the preceding 180 days from the date of the determination, derived from all sources, whether taxable or not. It also includes all amounts paid by anyone who is contributing on a regular basis to the debtor's household expenses, i.e., roommates and "significant others." The term does not include payments for war crimes against humanity and Social Security benefits. The term does not specify whether the current monthly income is gross income, i.e. income before taxes, or net income after all taxes are deducted.

Once the current monthly income of the debtor is established, the certain items shall be deducted in order to arrive at the bottom line amount available to fund a Chapter 13 Plan:

This section defines "estimated administrative expenses and reasonable attorney's fees" as 10% of the projected payments. The standing Chapter 13 Trustee's fees and expenses are currently fixed at 5.25% thus, it appears that with a cap at 10% projected payments in a Chapter 13 case are more than ample to cover all administrative expenses. Once that amount is established, the Bill specifies the amounts which shall be subtracted from the "current monthly income."

The debtor's monthly expenses shall be the expense items specified under the National Standards and Local Standards specified by the Internal Revenue Service (IRS) and "Other Necessary Expenses" issued by the IRS for the area where the debtor resides. In addition, the debtor may demonstrate that it is reasonably necessary to subtract an additional 5% for food and clothing from the amount of deductions specified for those items in the National Standard.

Next, there shall be a deduction for the average monthly payments on account of secured debts. Secured debts are calculated as the total amount scheduled by the debtor contractually due to secured creditors each month of the 60 month duration of the plan and dividing the total by 60. The calculation of the amount of secured debts under the formula is unrealistic because any resemblance between amounts scheduled and the real balance due is not even coincidental. Delinquent monthly charges generate late charges and penalties. Under the Supreme Court decision in Rake v Wade, 508 U.S. 464 (1993), the secured creditor is entitled to receive interest on the arrearages in addition to the contractual monthly payment which, of course, also already includes interest.

Next, there shall be a deduction for the debtor's monthly unsecured priority debt payments, including child support and

alimony payments, the total of which shall be divided by 60. Finally, one additional deduction which is oddly part of the subclause, establishes the standard for finding the presumption of abuse.

Lastly, Section 102(2)(A)(i) provides for a deduction for the education of a dependent child under 18 incurred monthly by the debtor for tuition, books and required fees at a private elementary or secondary school, not to exceed $10,000 per year. If the debtor's current monthly expenses after all these adjustments would still leave $6,000 for the funding of a 60 month plan or $100.00 per month, abuse is presumed.

Subclause (2)(B) provides that the debtor may rebut the presumption of abuse by demonstrating extraordinary circumstances that require additional expenses for an adjustment of the current monthly income. To establish this, the debtor is required to document each item of additional expense for an adjustment of the income and provide a detailed explanation of the extraordinary circumstances which make such expenses and income adjustment reasonable and necessary. The debtor is required to attest under oath to the accuracy of the information furnished. The presumption is rebutted only if these adjustments bring the debtor's annual income below $6,000 or will not permit a plan to be funded in 60 months by $100.00 monthly payments.

Subclause 102(c), entitled ADMINISTRATIVE PROVISIONS would amend Section 704 of the Bankruptcy Code which deals the duties of the trustee. Under this section the trustee is required to review all materials furnished by the debtor, consider all information presented at the meeting of creditors, and file with the court a statement within 10 days as to whether or not the debtor's Chapter 7 case is presumed to be abuse. The court shall within 5 days thereafter provide copy of the statement to all creditors. If a trustee determines the debtor's case should be presumed to be abuse and if the current monthly income of the debtor and the debtor's spouse is more than the highest national median family income reported for a family of equal or lessor size, then the trustee shall within 30 days either file a motion to dismiss or convert or file a statement setting forth the reason why the case should not be dismissed or converted.

Subclause (B) provides for an expense deduction of $583 for each additional member of a family over four persons when determining the national median family income. This determination is made with reference to information reported by the Bureau of the Census. It is not a very realistic standard because the report is made only once every 10 years, thus, it will be outdated in most instances.

Subclause (d) deals with the debtor's duties which, in addition to the already specified duties, requires the debtor now to file a statement of current monthly income and the calculations which determine whether there is a presumption of abuse. The statement must show each item of deduction and the manner of calculating the same.

SECTION 105 - DEFINITIONS

Section 105 of the Bankruptcy Reform Act of 1999 amends Section 101 of the Bankruptcy Code. Subsection (a)(3) provides a definition of an "assisted person" who is a person whose debts are primarily consumer debts and whose non-exempt assets are less than $150,000. This, of course, would make 90 to 95% of individual debtors who file Chapter 7 petitions "assisted persons." Subsection (4)(A) defines "bankruptcy assistance" as any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing or attending the creditors' meeting or appearing in a proceeding on behalf of another, or providing legal representation. This provision is far reaching and technically covers a merchant who sells bankruptcy forms to an "assisted person" and a friend or a nondebtor spouse who appears with the debtor who is pro se at the meeting of creditors' or in a proceeding in the debtor's case .

Subclause (12)(B) defines the term "Debt Relief Agency." The term refers to any person who provides any bankruptcy assistance to an "assisted person" for money or other valuable consideration. The term also includes petition preparers. The definition does not include any person that is an officer, director, employee or agent of: any nonprofit tax-exempt organization; any creditor of the person who is assisting the person to restructure a debt; or any FDIC depository institution, Federal credit union or State credit union.

SECTION 106 - ENFORCEMENT

Section 106 would amend Subchapter II of Chapter 5 of Title 11, by adding a new Sec. 526. Debt Relief Agency Enforcement. Subclause (a) describes several specifics which a debt relief agency shall not do. It shall not (1) fail to perform any services which it promised it will perform for the assisted person or prospective assisted person; (2) make any statement or counsel or advise any assisted person in any document filed in the case or proceeding which is untrue or misleading; (3) misrepresent to any assisted person directly or through material omission the services it can reasonably expect to provide or the benefits or the difficulties the assisted person may encounter; (4) advise the assisted person to incur more debts in contemplation of filing in order to pay an attorney or a petition preparer. Any waiver by an assisted person of any of the provisions set forth is unenforceable.

Any contract which does not comply with the foregoing is void and unenforceable. Noncompliance renders the debt relief agency liable to an assisted person for all monies paid by the assisted person plus actual damages, attorney fees, and costs if (a) it intentionally or negligently failed to comply; (b) it provided assistance in a case which was dismissed or converted for failure to file the required documents or; (c) it intentionally or negligently disregarded any provisions of the Code or the Rules. This section grants standing to the chief law enforcement officer of a state to bring an action to enjoin the violation and may bring an action on behalf of its resident to recover damages and, if successful, is entitled to attorney fees and costs. Although it is unclear, it appears that any enforcement action shall be brought in the U.S. District Court and the remedy available includes injunctive relief.

The term "civil penalty" is not defined and it is unclear whether the civil penalty will be paid to the court, the United States Trustee or the debtor.

SECTION 108 - DISCOURAGING ABUSIVE REAFFIRMATION PRACTICES

A creditor seeking reaffirmation of an unsecured debt must inform the debtor of his right to a hearing.

The debtor may waive the right if he is represented by counsel.

SECTION 109 - PROMOTING ALTERNATIVE DISPUTE RESOLUTION

Section 109(a) would amend Section 502 of the Code by adding sub-clause (k)(1). This provision authorizes the court on motion by the debtor after a hearing to reduce a wholly unsecured consumer debt by not more than 20%, if the debtor can prove by clear and convincing evidence that the creditor unreasonably refused to negotiate an alternative repayment schedule proposed by an approved credit counseling agency acting on behalf of the debtor. This provision, like many others, is basically meaningless and offers very little benefit to a debtor, who in order to achieve a possible 20% reduction of an unsecured claim will have to engage the services of an attorney to meet the standard of proof required. This is not an easy task for a Chapter 7 debtor. The section is largely meaningless because that unsecured claim would be discharged and, if the debtor is in Chapter 13, the unsecured creditor will receive the dividend which could be paid from the plan payments. This reduction is available only if the offer was made at least 60 days prior to filing and the offer provided payment of at least 60% of the amount of the debt over a specified period. No part of the debt under the alternative repayment schedule is nondischargeable, or entitled to priority under Section 507, or would be paid a greater percentage in a Chapter 13 plan than that which is offered by the debtor.

Subclause (2) makes it even more difficult to obtain an approval of a reaffirmation agreement because it places the burden on the debtor to prove that the proposed alternative repayment was made within 60 days and that the creditor unreasonably refused to accept the offer.

Subclause (b) renders any payment under the alternative repayment plan immune from any attack by the trustee as a preference.

SECTIONS 110 - 112 - contain detailed provisions dealing with regulations tightening the rules governing the credit card industry, requiring detailed disclosures concerning the terms and conditions of using a credit card and solicitation through the internet to get new users. These provisions facially appear to bring in a welcome change. However, it remains to be seen how this is going to play out on the street.

SECTION 113 - PROTECTION OF SAVINGS EARMARKED FOR POST-SECONDARY EDUCATION

Section 113 adds a new subclause (C) to Section 522(b)(2) and exempts funds placed in an education individual retirement account not less than 365 days before filing, provided that funds are not pledged for credit or extensions of credit and not in excess of the amount fixed by Section 4973(e) of the IRS Code. The funds are not exempt unless the designated beneficiary of the funds is a dependent child of the debtor for the taxable year for which the funds were placed in the account and the funds do not exceed $50,000 in all accounts for the particular dependent child, or $100,000 for all dependent children of the debtor.

It is unclear whether this new exemption is available to debtors in the opt-out states, i.e., Florida because it is not placed in Subclause (d) which specifies the federal exemptions which cannot be used in the opt-out states.

SECTION 117 - DISCOURAGING BAD FAITH REPEAT FILINGS

This section is designed to limit the operation of the automatic stay in repeat filings which are found to have been made in bad faith. It amends Section 362(c) by adding Subclause (3). This provides that if a debtor files a petition under Chapter 7, 11 or 13, when the debtor had a previous case pending within 1 year of the second filing, the automatic stay will automatically expire and terminate on the 30th day of the second filing, with respect to any debt or any property secured by that debt, or any lease involved in the previous case. Upon motion by a party in interest the stay may be continued as to any and all creditors, after notice and a hearing which must be concluded prior to the expiration of the 30th day. The stay can only be continued upon showing that the second case was not filed in bad faith. The case is presumed to have been filed in bad faith, which presumption can only be rebutted by clear and convincing evidence.

This provision applies to all creditors if the debtor had more than one previous case which was pending within the one year preceding the latest filing. The 30 day limitation of the operation of the automatic stay also applies if the debtor's case was dismissed within one year for the debtor's failure to file required documents or failure to furnish adequate protection as ordered by the court or for failure to perform the terms of a confirmed plan. In order to establish that the latest case was not filed in bad faith there must be a showing that there has been a substantial change in the financial and personal affairs of the debtor since the dismissal of the next most previous case. The 30 day limitation on the operation of the automatic stay also applies to any creditor who sought relief in the previous case, which case was dismissed before the motion for relief was resolved, or was resolved with an order granting the motion. If a previous case had been dismissed under 707(b) and the debtor had two or more cases pending within the previous year which were dismissed, the stay will not even go into effect upon filing the latest case. Upon request of a party of interest the court shall enter an order confirming that no stay is in operation.

In essence, this section attempts to prevent repeat filings and the misuse of the automatic stay for improper purpose, especially when the petition is filed for the sole and immediate purpose to prevent a holder of a secured claim to commence or complete an action in a nonbankruptcy forum to recover its collateral. Unfortunately, this section is needlessly verbose and confusing and could have been expressed in a more lucid and concise fashion.

SECTION 119 - DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY

This section is designed to deal with the enforcement

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Administrative Office of U.S. Courts Announces Bankruptcy Statistics: Record Number of Bankruptcies Filed in 1998. However, 1999 First Quarter Reports Show Significant Drop in Bankruptcy Filings

The total number of bankruptcies filed during 1998 rose to 1,442,549, breaking the record set the previous year, according to data released by the Administrative Office of the U.S. Courts. The number of new bankruptcies has set a record each of the last three calendar years.

Bankruptcies are up 84.2 percent since 1990, when bankruptcies totaled 782,960. Total filings in 1998 increased by 2.7 percent from 1997, when bankruptcies totaled 1,404,145.

Personal filings continue to drive the increase, climbing in 1998 to 1,398,182 filings, a 3.6 percent increase from 1997, when personal filings totaled 1,350,118. In all, personal bankruptcies are up 94.7 percent since 1990, when they totaled 718,107.

By contrast, business bankruptcies dropped 17.0 percent in 1998 to 44,367. Business filings totaled 54,027 in 1997. In all, business bankruptcies have decreased by 31.6 percent since 1990, when they totaled 64,853.

Personal bankruptcies represented 96.9 percent of all filings in 1998. They represented 91.7 percent of all filings in 1990.

The total number of new bankruptcies filed during the first three months of 1999 dropped to 330,784, posting the lowest number of filings since the final quarter of 1996, according to data released by the Administrative Office of the U.S. Courts.

The number of bankruptcies filed during the 12-month period ending March 31, 1999 totaled 1,419,199, a slight drop of 0.3 percent from the previous 12-month period, when filings totaled 1,423,128. Total bankruptcies for the 12-month period mark the first decrease since the identical period in 1996.

Personal bankruptcies for the quarter decreased to 321,604 (down by 5.9 percent when compared to the first quarter of 1998), and personal filings for the 12-month period ending March 31 increased by a fraction of a percent to 1,378,071.

The decline corresponds with a report in Monday's "Wall Street Journal" that the pace of new consumer debt has slowed, along with delinquency and charge-off rates. Moody's Investors Service reports that consumers are paying off outstanding principal at record levels.

Business bankruptcies continued their decline in the first quarter, consistent with the health of the national economy, dropping to 9,180, a 26.0 percent decrease from the same three-month period in 1998. Business filings decreased during the 12-month period ending March 31 to 41,128, a 21.9 percent drop from the previous 12-month period.

To view additional statistics, visit http://www.abiworld.org/stats/newstatsfront.html.

IT'S OFFICIAL: INDUSTRY STANDARDS ARE RELEVANT TO ORDINARY COURSE OF BUSINESS DEFENSES TO PREFERENCE ACTIONS

By: *D. Brett Marks, Esq.*
Dennis J. LeVine, Esq.
Dennis LeVine & Associates, P.A.

Bankruptcy practitioners in the Eleventh Circuit and elsewhere have operated under the assumption that the ordinary course of business defense under Section 547(c)(2) of the Bankruptcy Code does not require proof of industry standards. In fact, most courts assumed that the Eleventh Circuit held in the Craig Oil[1] case that Section 547(c)(2) does not contain a requirement that industry standards be examined.[2] This assumption was clarified by the Eleventh Circuit's recent decision In re A.W. & Associates, Inc. where the Court confirmed that bankruptcy courts are required to consider industry standards in evaluating whether preferential payments made by a debtor to a creditor are protected under Section 547(c)(2).[3]

In In re A.W. & Associates, Inc., the Chapter 7 Trustee appealed the Bankruptcy Court's decision to grant judgment in favor of a creditor accused of receiving preferential transfers. The Bankruptcy Court concluded that the creditor proved an ordinary course of business defense based upon "the debtor's internal operations and the circumstances of the transaction, not industry standards." The Bankruptcy Court, citing Craig Oil, also concluded that industry standards were not relevant to the establishment of an ordinary course of business defense.

On appeal, the Eleventh Circuit cited the Seventh Circuit case of In re Tolona Pizza Prods. Corp., 3 F.3d 1029 (7th Cir. 1993) for the rational that industry standards are essential to prove an ordinary course of business defense because:

(1) comparison to industry standards serves the

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evidentiary function of providing a basis to evaluate the parties' self serving testimony that an extraordinary transaction which was in fact intended as a preference towards a particular creditor was instead part of a series, transactions within a business relationship; and

(2) reference to industry standards reassures other creditors that deals have not been worked out favoring a particular creditor, which would permit a preference to slide under the § 547 fence.[4]

The Eleventh Circuit subsequently vacated the judgment and remanded the case to the Bankruptcy Court to consider evidence on the industry standards regarding payments.

A recent Florida case which interpreted A.W. & Associates, Inc. is In re L. Bee Furniture Co., Inc., 227 B.R. 902 (Bkrtcy. M.D. Fla.), where Judge Proctor reviewed and analyzed several decisions from other jurisdictions cited in A.W. & Associates, Inc. to determine the appropriate test for industry standards.[5] Judge Proctor adopted the "sliding-scale window" test adopted by the Third Circuit in In re Molded Acoustical Prods., 18 F.3d 217 (3rd Cir. 1994). Under this test, the bankruptcy court must answer the following questions:

(1) What is the industry standard?

(2) Does the practice between the parties meet that standard?

(3) If so, § 547(c)(2)(C) has been satisfied;

(4) If not, look at the history of the parties' relationship and credit practices.

(5) If the relationship and practice are not established, the practice falls outside industry standards and fails the test under § 547(c)(2)(C).

(6) If the relationship and practice are long-standing and are not gross departures from the industry norm, § 547(c)(2)(C) has been satisfied.

Since the A.W. & Associates decision is relatively new in the Eleventh Circuit, bankruptcy practitioners in the Middle District of Florida should review the cases cited in the decision for more insight into the evidence required to prove the ordinary course of business defense. Bankruptcy practitioners also should be prepared to put on evidence of industry standards at trial, or face judgment in favor of the debtor-in-possession or Chapter 7 Trustee.

1 Marathon Oil Co. v. Flatau, (In re Craig Oil), 785 F.2d 1563 (11th Cir. 1986)
2 Craig Oil contained dicta which suggested that the Bankruptcy Court focus exclusively on the relationship between the parties. Craig Oil, 785 F.2d at 1565.
3 In fact, the Eleventh Circuit stated that it had never actually decided the issue one way or the other.
4 In re A.W. & Associates, Inc., 136 F.3d at 1442 *citing* Tolona Pizza, 3 F.3d at 1032.
5 Judge Proctor noted that attempting to glean a precise definition of industry standards from A.W. & Associates was difficult because of the "short shrift" given in the opinion.

Message From The U.S. Trustee

By Sara Kistler

The Spring edition of the *Cram-Down* contained our article on the status of bankruptcy fraud prosecutions in the Tampa Division of the Middle District of Florida. This article provides an update on certain prosecutions which were reported in the last edition.

Martha Donavan

In the Spring Edition of *The Cram-Down*, it was reported that in September 1998, **Martha Donavan,** a former employee of the Locator Services Group, Ltd., of Boston, Massachusetts, pleaded guilty to one count of bankruptcy fraud under 18 U.S.C. § 152 and one count of mail fraud under 18 U.S.C. § 1341 as charged in an information filed by the U.S. Attorney's Office in Boston. The criminal charges were brought as a result of **Donavan's** action in fraudulently seeking turnover of unclaimed funds held in the Registry of the U.S Bankruptcy Courts in Tampa, St. Louis and Denver.

On May 12, 1999, United States Attorney Donald K. Stern announced that **Martha Donovan** was sentenced in Boston by U.S. District Court Judge George A. O'Toole to a term of three years' probation, which includes five months of home confinement with electronic monitoring.

As earlier reported, **Donovan** devised a scheme to submit false and fraudulent creditor claims to United States Bankruptcy courts' unclaimed funds in locations around the country, in order to collect on claims to which she was not entitled and on behalf of persons and entities who had not authorized her actions. **Donovan** first obtained a mailbox drop in the name of DeNapoli Refund Services Group, and represented herself to be Lori DeNapoli. From October through December, 1997, **Donovan** prepared and submitted five false claims totaling $65,000 for payment to bankruptcy courts in Tampa, St. Louis and Denver.

This case was referred by the Tampa and Boston Offices of the United States Trustee, investigated by the Federal Bureau of Investigation and prosecuted by the United States Attorney's Office in Boston.

Levitt and Littlejohn

On May 17, 1999 **Charlotte Levitt** was convicted of bankruptcy fraud, obstruction of justice, conspiracy and subornation of perjury. **Marilyn Littlejohn** was also found guilty of perjury and conspiracy, but acquitted on charges of bankruptcy fraud and obstruction of justice. The verdicts were rendered by a jury after four days of trial before the Honorable Steven D. Merryday, United States District Court Judge.

As earlier reported, **Levitt** and **Littlejohn** were each charged by indictment in February, 1999 with one count of violation of 18 U.S. C. § 152 (1), bankruptcy fraud, and one

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Clerk's Corner

By Charles G. Kilcoyne and Bobby Cater

Bankruptcy Noticing Center

In recent months many practitioners have noticed a change in the way they receive information from the bankruptcy court. There is a good reason for this. The court has implemented the Bankruptcy Noticing Center (BNC). What is it? Why has the court changed? Why can't the court go back to the good old days? What does the future hold? Hopefully this article will answer some of your questions.

In recent years, the Federal Government has focused its attention on reducing costs and making agencies more efficient. In the Federal Judiciary, this focus has been directed towards costs associated with noticing. A major function of the clerk's office is providing the service of case documents to parties involved. In bankruptcy courts, this results in major postal, paper, copy and labor requirements. To reduce these costs, the Judiciary has looked to automation to make the noticing function more efficient. The result is the BNC.

The Bankruptcy Noticing Center is a method of centralized mail handling which takes advantage of postal discounts and bulk mailing to reduce costs. In the past, the clerk's office would produce each case notice or order, copy it for all required parties, stuff each one into an individual envelope, seal the envelope, address each envelope with a photocopied address label, meter each piece and mail it. This is a labor intensive, time consuming and costly process. With the BNC, a case manager simply selects a notice and address list from a computer and sends them electronically to a centralized location. The center takes care of the rest.

Using postal discounts and bulk mailing has made the Bankruptcy Noticing Center one of the Judiciaries greatest economic successes. This success, in turn, led the Judiciary to reduce drastically funding for local court postal budgets. Without sufficient postage funds, the clerk's office faced the following options: place the noticing burden on debtor's counsel; reallocate resources from other vital areas of the court's budget; or use the BNC. For fiscal and fairness reasons, the court chose the BNC as the best long-term solution.

The court made the change realizing that implementing this new system would introduce short-term problems. As suspected, the volume initially taxed the Noticing Center's capacity. Many lawyers experienced problems, delays, and errors. Moreover, the court quickly recognized that in order to get the greatest benefit from the BNC, our automation staff had to develop local applications to make the Noticing Center more flexible and efficient. This led to other start-up problems.

However, the clerk's office is working out the problems and the service from the BNC is improving daily. We believe the process is more reliable now that the BNC is in full production. Furthermore, the financial benefit of the BNC is already evident. The Middle District projects savings of $167,000 in postage costs in fiscal year 1999. Costs for paper, toner, and copies are also falling.

The BNC is only the first step. We are adding newer services to make noticing more timely and dependable. The BNC is now working with large creditors on the next generation of noticing: Electronic Bankruptcy Noticing (EBN). Under this method, paper notices are eliminated and creditors receive service as an electronic record on a computer. With the system in gear and changes on the horizon, the BNC should continue to provide fast reliable service of our court's documents.

Additional Copies of the Bankruptcy Seminar For Paralegals and Legal Assistants Notebook can be purchased.

Cost: Member $25.00 plus $5.00 shipping and postage
Non-Member: $28.00 plus $5.00 shipping and postage

Contact: Curran Porto
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count of 18 U.S.C. § 371, conspiracy. **Levitt** was also charged with two counts of violation of 18 U.S.C. §1503, obstruction of justice, and one count under 18 U.S. C. § 1623, subornation of perjury. **Littlejohn** was also charged with one count of obstruction of justice and one count of subornation of perjury. The case was referred to the United States Attorney by the Tampa Office of the United States Trustee after it was learned that **Levitt** had allegedly concealed various bankruptcy estate assets, including household furnishings and other personal property, by transferring the property to the possession of her neighbor, **Littlejohn**. During the trial of an adversary proceeding brought pursuant to 11 U.S.C. § 727, both **Levitt** and **Littlejohn** allegedly provided perjured testimony to the Bankruptcy Court regarding the disposition of the property. Further, during the course of the adversary proceeding, testimony was adduced alleging that **Levitt** and **Littlejohn** attempted to influence the testimony of witnesses called to testify in the proceeding.

People On The Go

Robert L. Olsen recently became a shareholder with the law firm of **Fowler, White, Gillen, Boggs, Villareal & Banker, P.A**.

Edward M. Waller, who heads the Business Litigation Department at **Fowler, White**, recently became President of Bay Area Legal Services.

Wanda Hagan Anthony and **W. Gregory Golson** recently became partners with the law firm of **Stichter, Riedel, Blain & Prosser, P.A. Luis Martinez Monfort** has joined **Stichter, Riedel** as an associate.

Noel Boeke recently joined **Holland & Knight LLP** as an associate practicing primarily in bankruptcy and creditors' rights matters. Noel earned a B.A. from Northwestern University, an M.B.A. from the College of William & Mary, and a J.D. from the University of Georgia. Prior to law school, Noel served over seven years in the U.S. Navy.

F. Lorraine Jahn has become associated with the Solomon & Benedict law firm. She concentrates on commercial litigation, bankruptcy law and creditor rights. Lorraine received her law degree from the University of Miami.

Dennis J. LeVine, the President of the Tampa Bay Bankruptcy Bar Association, spoke on a panel at the American Bankruptcy Institute's annual meeting in Washington, D.C. during the weekend of April 16, 1999. The panel covered cutting-edge issues and consumer bankruptcy. Mr. LeVine presented two topics. The first involved new case law on the dischargeability of student loans. The second issue related to whether a creditor must surrender to the debtor who files Chapter 13 a car which the creditor validly repossessed pre-petition.

John J. Lamoureux spoke at the American Bar Association's Business Law Spring Meeting in San Francisco, California during April 15-17, 1999. Mr. Lamoureux spoke on a panel discussing surcharge issues under Bankruptcy Code §506(c). In connection with the panel discussion, Mr. Lamoureux and his colleagues, **Edmund S. Whitson and Constantino B. Cater** wrote an article entitled *SHOW ME THE MONEY!. Strategies And Argument For Getting Paid Professional Fees When Representing A Chapter 11 Trustee (Without Having To Surcharge Collateral Under §506(C)).*

Richard B. Feinberg of **Debt Relief Legal Services** was recently married to Jennifer Tinnerman.

Dennis J. LeVine and **D. Brett Marks** announce that their firm has moved to 103 South Boulevard, Tampa, Florida 33606. The firm's post office box, telephone, and fax numbers will remain unchanged.

New Members

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Tampa Bay Bankruptcy Bar Association's First Annual Golf Tournament a "Swinging" Success

By Michael C. Markham

The first ever TBBBA golf tournament was held at WestChase golf course on May 14, 1999. Fifty-four golfers participated in a scramble format. First place was taken by the team of Larry Foyle, Dan Rock, John Brook and Clay Brook. (An investigation is ongoing as to the accuracy of their score). Second place was taken by the team of Kim Johnson, Glenn Johnson and Bill Weldon. Closest to the pin trophies were awarded to Beth Daniels, Pat Tinker, Mark Gauthier and Dan Rock. In the challenging two member Judge's Division, Judge Glenn took first place and Judge Corcoran received the runner-up trophy.

Special thanks to major sponsors Johnson Transcription Service and Choice Express and volunteers Kim Johnson, Paula Luce and Cathy Kempp. Despite a little rain, a great time was had by all. Thanks to all who participated and hope to see you again next year.

View From the Bench Continued From Page 4

provisions of Section 521 of the Code which describes the duties of the debtor. The new Subclause (C)(6) provides that in the Chapter 7 case of an individual, the debtor may not retain possession of personal property to which a creditor has an allowed claim for the purchase price secured in whole or in part unless the debtor, within 45 days, either enters into a reaffirmation agreement with respect to the claim secured by such property or redeems the property pursuant to Section 722. If a debtor fails to act, the automatic stay terminates and the property is no longer deemed to be property of the estate. The escape provision, just like in the previous section, permits an extension of the 45 day period provided the motion is filed before the expiration of that period and only upon showing that the property has consequential value or benefit to the estate. The extension can only be granted if the court orders adequate protection for the creditor's interest.

This section makes it clear that the redemption must be paid for full value of the property and the debtor cannot redeem the property by installment payments.

SECTION 120 - RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL

This section provides that the automatic stay is terminated with respect to personal property of the estate, or of the debtor, securing in whole or in part or subject to an unexpired lease, if the debtor fails to comply with the requirements of Section 521(a)(2). This section requires that the debtor state it's intention concerning the retention or surrender of the property either by redemption or by reaffirmation or by assumption of an unexpired lease. Once the debtor has stated what it is going to do, it has 45 days within which to perform the redemption, reaffirmation or assumption, or the stay is terminated.

This section terminates the operation of the automatic stay with respect to personal property of the estate which is subject to a security interest or the property involved in a lease, if a debtor stated its intention but did not perform the intention. The court may, however, upon motion of the trustee filed before the time set by this action, after notice and hearing, extend the stay but only upon showing that the property is of consequential value or benefit to the estate.

Subclause (c) of this section is designed to deal with rent-to-own personal property and provides that any personal property which is leased rented or bailed to the debtor, and the contract has a default provision, and the debtor is in default prior to the commencement of the case, the forfeiture of the lease is valid and enforceable unless the reason for the default is the pendency or existence of a proceeding under Title 11, or the insolvency of a debtor.

SECTION 122 - RESTRAINING ABUSIVE PURCHASES ON SECURED CREDIT

This section amends Section 506 and provides that an individual in a Chapter 7, 11, 12 or 13 may not strip down a purchase money security interest acquired by the debtor within five years of the filing. The balance owed on such obligation shall be the unpaid principal balance of the purchase price plus accrued and unpaid interest, which is charged at the contract rate of interest.

SECTION 123 - FAIR VALUATION OF COLLATERAL

Continued on page 7

This section again amends Section 506(a) and provides that the standard to value personal property which secures an allowed claim shall be the replacement value as of the date of the commencement of the case without deduction of cost of sale or marketing.

SECTION 124 - DOMICILIARY REQUIREMENTS FOR EXEMPTIONS

This section amends Section 522(b)(2)(A) by striking 180 days and replacing it with 730 days (2 years) as to the domicile requirement to utilize the exemptions of the state where the debtor resides on the date of filing.

This section is apparently designed to prevent runaway debtors who seek exemption-friendly states, like Florida, in order to shelter assets which they could not do in the state that they previously resided.

SECTION 125 - RESTRICTIONS ON CERTAIN EXEMPT PROPERTY OBTAINED THROUGH FRAUD

This section is designed to deal with conversion of nonexempt property into exempt property. The new version now limits the right to claim exemption in a property, which was acquired with funds by selling or converting a nonexempt to an exempt property, to the value which is attributable to any portion of the property by using the funds from the disposition of a nonexempt property within the preceding 730 days. This simply means, for instance, if a debtor liquidated a nonexempt portfolio of securities, which liquidation provided $100,000 and the debtor used the $100,000 to buy a homestead, which ordinarily would be exempt in Florida regardless of the value, the first $100,000 value could not be claimed as exempt, only the value in excess of that amount which is not attributable to the proceeds of the fraudulent conversion. The time frame fixed is 2 years (730 days) and requires a proof of intent to hinder or delay creditors before the exemption claim could be attacked on this ground.

SECTION 127 - DISCHARGE UNDER CHAPTER 13

This section adds an additional exception to a discharge a debtor may obtain in Chapter 13. It deals with restitution or criminal fines included in a sentence for the debtor's conviction of a crime or for restitution or damages awarded in a civil action against a debtor as a result of willful or malicious injury by the debtor which caused a personal injury to an individual, or the death of an individual. This apparently adopts the current exception to discharge set forth in Section 523(a)(6) but fails to specify whether or not this includes damage awards resulting from gross negligence or reckless conduct, which under the Supreme Court decision Kawaauhau v. Geiger, 523 U.S. 57, 118 S.Ct. 974, 977, 140 L.Ed.2d 90 (1998), is not within the scope of this exemption. Also it fails to specify or is silent concerning whether or not punitive damage awards for willful malicious injury are within this exception.

SECTION 129 - ADDITIONAL AMENDMENTS TO

Continued on Next Page

TITLE 11, UNITED STATES CODE

This adds an additional priority and provides that any allowed claim for death or personal injury resulting from the operation of a motor vehicle or vessel operated by a debtor intoxicated from alcohol, drug, or other substance shall be accorded 10th priority in Chapter 7 cases. It is unclear why this required a special treatment since Section 139 amends the entire priority section of 507(a) thus, logically, the change should have been included in Section 139.

SECTION 131 - APPLICATION OF THE CODEBTOR STAY ONLY WHEN THE STAY PROTECTS THE DEBTOR

The co-debtor stay of Chapter 13 is amended by adding a new Subclause (2)(A), which limits the operation of the automatic stay to 30 days for proceeding against an individual who is jointly liable with the debtor if (1) the debtor did not receive any consideration for the debt, or (2) if the property that secures the claim is not in the possession of the debtor. Subclause (2)(B), however, protects spouses and the stay applies to a nondebtor spouse provided the debtor is held primarily liable to the creditor under a binding separation or property settlement agreement or divorce or dissolution decree. Subclause (3) provides that the stay terminates as of the date of the confirmation of the plan if the plan provides for the surrender of the leased property or the property has been abandoned and no payments have been made with regard to that property under the plan on account of a debtor's obligation under the lease.

SECTION 133 - LIMITATION ON LUXURY GOODS

There is a presumption of nondischargeability currently in Section 523(a)(2)(C) as amended by this section. The proposed amendment provides that consumer debts owed to a single creditor aggregating more than $250 for luxury goods and services incurred within 90 days before filing or cash advances of more than $250 from a consumer creditor, or open end credit plan, are presumed to be nondischargeable. This is a radical revision of the previous version in which the amount for luxury goods and services, as well as cash advances, is $1,075.00 incurred within 60 days prior to filing, whereas it used to be 90 days prior.

SECTION 134 - ALLOWING THE DEBTOR TO RETAIN LEASED PERSONAL PROPERTY BY ASSUMPTION

This section is designed to amend the provision dealing with assumption of unexpired leases of personal property. If the lease for personal property under this amendment is rejected, or not timely assumed, the property leased is no longer property of the estate, consequently, not protected by the automatic stay. An individual in a Chapter 7 case may notify the lessor in writing that it desires to assume the lease. The lessor may, at his option, notify the debtor that it is willing to have the lease assumed and state the condition for assumption to cure any defaults. If, within 30 days of the notice from the creditor, the debtor notifies in writing that he assumes the lease, the lease is deemed to be assumed. In Chapter 11 and 13 cases, if a plan does not provide for an assumption, the lease is deemed to be rejected.

SECTION 135 - ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS

In a Chapter 13 case a debtor under this provision shall make cash payments within 30 days after filing on the lease of personal property to the lessee and to any creditor who holds a claim secured by purchase money interest. These adequate protection payments shall be continued to be made until the creditor receives the actual payments under the plan or the debtor relinquishes possession of the property either to the lessor or to a creditor or to any third party. The payments to be made are the contract payments and shall reduce any amount due to the party under the contract. The payments shall not be made less frequently than monthly.

Subclause (d) deals with the situation where the personal property has been repossessed prior to the commencement of the case. The proposed amendment provides that the lessor or a secured party is not required to surrender the property and the retention is not a violation of the automatic stay until the first payment is made for adequate protection to the lessor or the creditor. As an additional protection to the lessor or a creditor, Subclause (e) requires the debtor to provide each creditor or lessor within 60 days of filing reasonable evidence of maintenance and the required insurance coverage concerning the property involved.

SECTION 136 - AUTOMATIC STAY

This amendment is, no doubt, a reaction by Congress to the prevalent abusive practice in California to invoke the protection of the automatic stay by debtors who are tenants who file their petition at the last minute to prevent eviction for nonpayment of rent. This section excepts from the operation of the automatic stay commencement or continuation of any eviction, unlawful detainer action or similar proceeding, by a lessor against a debtor who resides as tenant under a lease which has been terminated pursuant to a lease agreement under applicable state law. This exception also applies if the debtor has previously filed within the last year and failed to pay postpetition rent and if the eviction action is based on endangerment to property or person or use of illegal drugs.

SECTION 137 - EXTEND PERIOD BETWEEN BANKRUPTCY DISCHARGES

This section shortens the time period from 6 to 5 years during which a debtor cannot get a second discharge if it received one in a previous case where the discharge was either granted or denied.

SECTION 138 - DEFINITION OF DOMESTIC SUPPORT OBLIGATION

This section defines domestic support obligations. The term includes debts which accrued before or after the commencement of the case owed to or recoverable by spouse, former spouse, or a child of a debtor or a child's legal guardian or to a governmental unit. It also includes alimony maintenance and support including assistance provided by a governmental unit to a spouse, former spouse, or child, regardless whether or not such debt is expressly so designated.

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This obligation must be determined by a separation agreement; divorce decree; property settlement agreement; order of a court of record; or pursuant to an applicable nonbankruptcy law by a governmental unit. The terms does apply if the obligation has been assigned to a nongovernmental entity unless it was assigned voluntarily by the spouse, former spouse, child or parent, for the limited purpose of collecting the debt.

SECTION 139 - PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS

This is the priority section of Chapter 7 and is completely renumbered. It now provides first priority, ahead of cost of administration, for allowed claims for domestic support obligations, if the funds are received by a governmental unit. The funds are to be applied to claims owed for domestic obligations without regard to whether the claim is filed by the spouse, former spouse, child or parent, or is filed by a governmental unit on behalf of that person. This is a radical revision, of course, of the priority scheme and will no doubt give great incentive to trustees in Chapter 7 cases to pursue a vigorous administration of an estate for the purpose of paying the domestic obligations in full, with the likelihood that they will not be able to receive any compensation for their services.

SECTION 140 - REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS

This section amends Section 1129(a) which deals with confirmation of Chapter 11 plans. It adds a new Subclause (14) and makes a condition precedent for confirmation that the debtor pay in full all domestic support obligations required by a judicial or administrative order or statute which became due and owing on the date of the commencement of the case.

It also amends Section 1325(a) which deals with confirmation of Chapter 13 plans and requires as condition precedent for confirmation, full payment of all debt for domestic support obligations required by judicial or administrative order or statute, which were due and owing on the date of the commencement of the petition.

It also amends Section 1328(a) and requires a certification as condition for confirmation that all domestic obligations by a judicial or administrative order or statute has been paid that were due on or before the date of the certification or after the completion by the debtor of all payments under the plan.

SECTION 141 - EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS

There is an added new exception to the operation of the automatic stay which also excepts a proceeding to establish or modify an order for support obligations, or any proceeding to compel collection of domestic support obligations, from property which is not property of the estate. It is unclear what is the scope of this particular exception in Chapter 13, since in Chapter 13 postpetition earnings of a debtor are property of the estate. Thus, it appears that any attempt to garnish or sequester the wages of a Chapter 13 debtor would be a violation of the automatic stay.

The two additional exceptions to the operation are set forth in Subclause (27) which excepts from the operation of the automatic stay any action to withhold income pursuant to an order pursuant to Section 466(b) of the Social Security Act (42 U.S.C. 666(b)) and new Subclause (28) which provides that the automatic stay doesn't operate concerning withholding suspension or restriction of driver's licenses, professional and occupational licenses, recreational licenses pursuant to local law, which is permitted by Section 466(a)(16) of the Social Security Act or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency. It doesn't prohibit the interception of tax refunds by the Social Security agency and enforcement of medical obligations under Title IV or the Social Security Act.

All these provisions are designed to permit the Social Security Service to, without violating the automatic stay, take affirmative and enforcement actions against debtors who have received unauthorized payments or overpayments under any provisions of the Social Security Act.

SECTION 144 - PROTECTION OF DOMESTIC SUPPORT CLAIMS

AGAINST PREFERENTIAL TRANSFER MOTIONS

Immunizes from preferential transfer attack any payments which were bona fide payment by a debtor for domestic support obligation.

SECTION 147 - MONETARY LIMITATION ON CERTAIN EXEMPT PROPERTY

This section places a cap on equity of $250,000 on homestead exemption. This provision is even applicable in opt-out states such as Florida. This limitation applies to all real and personal property which a debtor, or dependent of debtor, uses as residence, or a co-op that owns the property which the debtor or dependent uses as a resident, or a burial plot which debtor or dependent uses. This limitation on exemptions does not apply to Family Farmer's principal residence.

SECTION 149 - COLLECTION OF CHILD SUPPORT

This amends Section 704 of the Code which specifies the trustees duties by adding a new Subclause (11). This provides that if there is a claim against the debtor for support of a child and such child is entitled to receive priority, a trustee is required to notify in writing the holder of the claim to use the services of a state child support enforcement agency. It also requires the trustee to include in the notice the address and phone number of the child support enforcement agency and to notify the state child support agency of the state in which the claim holder resides, including in the notice the name address and telephone number of the holder of the claims.

In addition, if a debtor receives a discharge the trustee is required to notify the holder of such claim and the state child support agency that discharge has been granted. The trustee is also required to give the last known address of the debtor; the name of each creditor that held a claim which is not discharged, or a list of debts which were reaffirmed by the debtor. If in spite of all these notices the child support agency is unable to locate the debtor the agency may request from the creditor whose debt has not been discharge the name and address of the

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debtor.

The duties of the Chapter 13 trustee also have been enlarged by amending Chapter 1302 by requiring the trustee in a case where there is a claim for support of a child, or by a custodial parent of a child, who is entitled to priority under Section 507(a)(1) to furnish the same notification as required of the Chapter 7 trustee.

SECTION 150 - EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE

This section now excludes from the property of the estate any amount of interest in property which an employer withheld from the wages of an employee for contribution to an employee benefit plan subject to ERISA. It also excludes monies or property to the extent that the employer received as a result of payments by participants for contributions to an ERISA qualified plan.

SECTION 152 - EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS

There is an additional exception to the operation of the automatic stay which doesn't prohibit withholding income for payment of a domestic support obligation pursuant to judicial or administrative order or statute which first becomes payable after the commencement of a case. It also excepts such obligations as became due and payable before the commencement of the case unless the court finds, after notice and hearing, that withholding it would render the plan unfeasible.

SECTION 153 - AUTOMATIC STAY INAPPLICABLE TO CERTAIN PROCEEDINGS AGAINST THE DEBTOR

The exception to the automatic stay also applies to the commencement or continuation of a proceeding concerning child custody or visitation; a proceeding alleging domestic violence; or a proceeding seeking a divorce, except to the extent the proceeding concerns property of the estate.

SENATE REFORM BILL S.625

It appears that in light of the overwhelming approval by the House, HR 833 is considered to be "vetoproof." The supporters of the Senate version S.625, the Grassley Bill, are pushing to keep the Bill on track and expect to get the Bill to the floor during the week of May 17th, or at least a passage before the Memorial Day recess. The Bill is co-sponsored by five democrats under the leadership of Senator Torricelli of New Jersey. It appears that they decided to work toward amendments rather than block the passage of the Bill.

These amendments are centered around the following provisions of the House Bill:

(1) Eliminating a provision in HR 833 which would impose special liability on the debtor's attorney who file Chapter 7 petitions which are found to be unjustified and an abuse.

(2) Easing the monthly expense formula derived from IRS Regulations which determine under HR 833 the threshold standard for eligibility for relief under Chapter 7 and how much the debtor will have to repay in a Chapter 13 Plan.

(3) Insuring that creditors have the burden of proving allegations that the debt was incurred by fraud.

(4) Beefing up disclosures that will have to be made on credit card solicitations and on invoices warning debtors of the terms and consequences of the credit.

It should be noted that there is another Bill pending in the Senate, S.945, introduced by Senator Durbin, Democrat from Chicago, which is the same Bill passed by the Senate last, year, S.97-1. This Bill would give bankruptcy judges far more discretion in deciding whether a debtor who filed a Chapter 7 case should be compelled to seek relief in Chapter 13 or suffer dismissal. The Bill would also impose many more obligations on credit card issuers.

There is one more major amendment expected from Senators Grassley and Kohl which would provide for a cap on the equity in the debtor's homestead which could be claimed as exempt.

Technology Update

By Edwin Rice

Internet Access to Bankruptcy Court Docket. Bankruptcy Court dockets for the Middle District of Florida can be accessed through the Bankruptcy Court's website (www.flmb.uscourts.gov) via Pacer. There has been no charge for docket access over the Internet while work on the Court's website has been in progress. However, the Bankruptcy Court's website will soon be complete, ending free Internet access to the Court's dockets. In the near future, Internet access to Bankruptcy Court dockets via Pacer will accrue charges at $.07 per page viewed. Non-Pacer related information provided on the Bankruptcy Court's website will continue to be provided free of charge.

Video Conferencing. Video conferencing at the Sam M. Gibbons Courthouse should soon be available to bankruptcy practitioners. The clerk's office advises that necessary funding to wire one of our local courtrooms for video conferencing has been approved, and that a vendor for installation of the video conferencing system has been chosen. If all goes according to schedule, the video conferencing equipment should be installed by the end of the year. This should alleviate the need for Tampa attorneys to travel to Ft. Myers to handle routine non-evidentiary Ft. Myers bankruptcy hearings.

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The Tampa Bay Bankruptcy Bar Association
Committee Chairs 1998 – 1999

The Association is looking for volunteers to assist us this coming year. If you are interested in getting more involved with the Association or one of the Standing Committees, please contact anyone of the Association officers or the Chairperson(s) listed below.

Committee	Chair(s)	Telephone	Facsimile
Membership and Election	Rodney Anderson	(813) 227-6721	(813) 229-0134
Meetings, Programs and Continuing Legal Education	Steven M. Berman Allyson Hughes	(813) 301-1000 (727) 842-8227	(813) 301-1001 (727) 842-8151
Publications and Newsletter	Steven M. Berman John J. Lamoureux	(813) 301-1000 (813) 223-7000	(813) 301-1001 (813) 229-4133
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Computer Access Users	Edwin G. Rice	(813) 229-3333	(813) 229-5946
Community Service	Patrick R. Smith	(813) 871-3319	(813) 871-3616

CALENDAR OF EVENTS

DATE	EVENT	TIME	LOCATION
June 17, 1999	TBBBA Annual Dinner	6:30 p.m.	Starlite Cruise, Garrison Seaport Center, Downtown Tampa behind the Florida Aquarium
August 4-7, 1999	ABI SE Regional Seminar		Amelia Island, Florida
September 17, 1999	ABI View from the Bench Seminar		Washington, D. C.
October 27, 1999	View from the Bench Cocktail Reception	6:30 p.m.	Tampa Bay area
October 28, 1999	View from the Bench Seminar	8:30 a.m.	Tampa Bay area
October 29, 1999	View from the Bench Seminar		Miami

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1998 - 1999

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